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Single Bench

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Criminal Appeal No. 684 / 2005

30/6/05

Filed on 18/08/05

by Shri Sunil Sahu

Advocate

R. to D.R. (J)

Appellant (In Custody)	:	Lakmu LAKHMU 30/08/05 S/o Shri Kriparam, Aged about 33 years, R/o Village – Jhar Umargaon, P.S. – Jagdalpur, Dist : Bastar – (C.G.)

Versus

Respondent	:	State of Chhattisgarh Through The District Magistrate Jagdalpur, Dist : Bastar-(C.G.)

CRIMINAL APPEAL U/S 374 (2) OF THE CRIMINAL PROCEDURE CODE

A.F.R.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.684/2005

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Lakhmu

Versus

State of Chhattisgarh

Shri Prafull N. Bharat, Counsel for the appellant.

Shri Arun Sao, Government Advocate for the State.

JUDGMENT

(Delivered on this 14th day of June 2006)

This appeal is directed against the judgment 14.7.2005 delivered by Shri Ravishanker Sai, 4th Additional Sessions Judge (F.T.C.), Jagdalpur in Sessions Case No. 492/2000 whereby the appellant was convicted under Section 376(2)(g) I.P.C. and was sentenced to undergo rigorous imprisonment for 10 years and a fine of Rs.200/- and in default of payment of fine, the appellant was ordered to undergo additional rigorous imprisonment for three months.

2. Briefly stated the factual matrix is that on 11.1.2000 Manmati P.W.1, aged about 18 years, a married woman had gone to forest along with Cheti Bai P.W.2 and her daughter Meghwati for collection of leaves. The appellant Lakhmu and one Sonsingh arrived there and threatened Cheti Bai and Meghwati at the show of *Tangia* whereupon they left for the village. The appellant Lakhmu and co-accused

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Sonsingh forcibly removed the gold and silver ornaments worn by Manmati and thereafter appellant Lakhmu and Sonsingh committed rape on the prosecutrix one after the other. Although on being threatened Cheti Bai P.W.2, sister-in-law of the prosecutrix left the scene of occurrence, she saw the occurrence from a distance. F.I.R. was lodged by the prosecutrix vide Ex.P.1 after three days on 14.1.2000 at Police Station Kotwali, Bastar situated about 12 kilometers away from the place of occurrence. It was stated that the delay had occasioned since there was no one to accompany her to the Police Station. On medical examination, Dr. Smt. A. Chandra P.W.6 found superficial abrasions on the right leg anterior aspect, right knee and right ankle joint but no mark of injury on private parts of the prosecutrix was seen. No positive finding as to rape on the prosecutrix could be given. The appellant was also medically examined by Dr. Virendra Kumar Jha P.W.5. It was found that he was capable of performing sexual intercourse. The ornaments alleged to have been removed from the person of the prosecutrix were not recovered during investigation. After completion of investigation, the appellant was prosecuted under Section 392 & 376 (2) (g) of the I.P.C. Co-accused Sonsingh was declared to be absconding.

3. The appellant abjured the guilt, pleaded innocence and false implication and led no evidence in defence. The prosecution examined as many as 8 witnesses. Relying upon the evidence led by the prosecution and finding the testimony of the prosecutrix trustworthy, the learned trial Judge convicted the appellant under Section 376(2)(g) of the I.P.C. and awarded sentence as mentioned in paragraph 1.

4. Shri Prafull Bharat, learned counsel appearing for the appellant, has argued that the evidence led by the prosecution does not establish the guilt of the appellant under Section 376 (2) (g) I.P.C. beyond doubt. It was contended that the prosecutrix was not a trustworthy witness since delay in lodging the F.I.R. was not satisfactorily explained by. her. Ornaments alleged to have been removed from her person were not recovered during investigation. Although Cheti Bai P.W.2 had in cross-examination paragraph 5 stated that the prosecutrix was ravished by the appellant Lakhmu and co-accused Sonsingh for one hour each, yet medical evidence of Dr. Smt. A. Chandra P.W.6 did not corroborate the above testimony since no injury on private parts was seen and definite opinion about commission of rape could not be given. It was also argued that Meghwati, a material witness was given up by the prosecution though present in the Court without any rhyme or reason on 30th April 2001 for which an adverse inference needs to be drawn. It was also contended that the testimony of Lachhni Bai P.W.4, mother of the prosecutrix that bleeding had occurred from the ears and nose of the prosecutrix after the occurrence was not corroborated by medical evidence. Placing reliance on *Vimal Suresh Kamble v. Chaluverapinake apal S.P. and another* **(2003) 3 Supreme Court cases 175**, it was argued that the conviction of the appellant could not be sustained since the prosecutrix was not a trustworthy witness. Reliance was also placed on *State of Karnataka v. Mapilla P.P.Soopi* **(2003) 8 Supreme Court Cases 202.** Referring to the testimony of the prosecutrix in paragraph 6, it was contended that the delay in lodging the F.I.R. renders the testimony of the prosecutrix wholly unworthy of credit. On the other hand, Shri Arun Sao, learned Government Advocate argued in support of the impugned judgment.

5. Having heard the rival contentions, I have perused the record. The prosecutrix has deposed that she had gone to the forest for collection of leaves along with her sister-in-law Cheti Bai P.W.2 and her daughter Meghwati. She stated that the appellant came there with co-accused Sonsingh and threatened Cheti Bai and Meghwati who fled away. Thereafter, the appellant-Lakhmu committed rape on her, followed by co-accused Sonsingh. It was also stated that the gold and silver ornaments worn by the prosecutrix in the ear, nose and neck were forcibly removed by the appellant and Sonsingh.

6. It is settled law that conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The question which therefore requires consideration in this appeal is whether the testimony of the prosecutrix is worthy of credit and the reliance could be placed on it for convicting the appellant under Section 376 (2)(g). In paragraph 6 & 7 of her testimony, the prosecutrix stated that on returning home she did not narrate the incident to her husband. She also admitted in paragraph 7 that she did not narrate the incident of rape to her mother Lachhni Bai P.W.4, but had only told her about the removal of her ornaments by two unknown persons since she did not know the names of the appellant and Sonsingh. If this was true, a report would have been promptly lodged. Cheti Bai P.W.2 has stated that she had narrated the entire incident to Lachhni Bai P.W.4, the mother of the prosecutrix, immediately on returning home. If this was true, a prompt report would have been lodged. However, this is sharply contradicted by the prosecutrix since as per her version the incident of rape on her was not known to her mother or husband for three days after the occurrence. Lachhni Bai P.W.4 stated in cross-examination

that she had seen blood oozing from the ear and nose of the prosecutrix on her returning home. However, this is not corroborated by medical evidence.

7. So far as the testimony of Cheti Bai is concerned, she stated to have seen the occurrence from a distance of 8 or 10 steps. She further stated that the appellant-Lakhmu had committed rape on the prosecutrix for about an hour followed by co-accused Sonsingh who also committed the sexual act for an hour. Medical evidence of Dr. Smt. A. Chandra does not reveal that there was any injury on the back of the prosecutrix. It appears highly unnatural that if the prosecutrix was ravished for one hour each by the appellant and co-accused, she would not have sustained any injury on her back.

8. If the prosecutrix did not know the appellant from before and also did not know his name, it is strange how a named F.I.R. Ex.P.1 was lodged by the prosecutrix, 3 days after the occurrence. Undue delay in lodging the F.I.R. without acceptable evidence of the prosecutrix, contributes to the doubt in the ~~prevention~~ prosecution case as held in *State of Karnataka v. Mapilla P.P.Soopi* **(2003) 8 Supreme Court Cases 202.**

9. The testimony of Cheti Bai P.W.2 that she saw the occurrence from a very close range is also rendered unreliable, in view of the assertion by the prosecutrix in paragraph 5 that after the occurrence she had met Cheti Bai at a distance of about one kilometer from the place of occurrence. Thus, it cannot be believed that Cheti Bai saw the occurrence. Had Cheti Bai seen the occurrence and if she and her daughter had been threatened by the appellant to leave at the point of a *Tangia*, before committing rape on the prosecutrix, they would have informed the husband of the prosecutrix or atleast the villagers

immediately on reaching the village. So far as the non-examination of Meghwati, daughter of Cheti Bai is concerned, there is no satisfactory explanation for not examining the witnesse though she was present in the Court on 30th April 2001 and an adverse inference is drawn against the prosecution on this count.

10. It is also pertinent to note that in the F.I.R., the reason for the delay in lodging the F.I.R. has been shown to be the fact that there was no person to accompany the prosecutrix to the Police Station. However, in her testimony in paragraph 8, the prosecutrix stated that since she did not have enough money, she could not go to lodge the report on the next day. The testimony of the prosecutrix in paragraph 6 and the testimony of Lachhni Bai P.W.4 in paragraph 3 clearly show that the husband of the prosecutrix was with her not only on the night of the occurrence but also on the next date. It is also pertinent to note that the prosecutrix in paragraph 7 stated that she had told her mother Lachhni Bai P.W. that the appellants removed her ornaments. If the fact of forcible removal of the ornaments of the prosecutrix by the appellant was known, a prompt report would have been lodged by the prosecutrix or her husband. The prosecutrix has categorically stated that she did not narrate the incident of rape even to her mother. This conduct of the prosecutrix is quite unnatural and renders her testimony unworthy of credit.

11. Dr. Smt. A. Chandra has, in her testimony, stated that she had prepared a vaginal slide of the prosecutrix. In the F.I.R. Ex.P.1, the prosecutrix had clearly mentioned that seminal stains were present on her petticoat. Prosecution has proved the report of the F.S.L. Ex.P.16 which shows that no seminal stains were seen either on the petticoat

of the prosecutrix or on her vaginal slide. This also renders the testimony of the prosecutrix doubtful.

12. Having thus considered the evidence led by the prosecution in its entirety, the following points emerge:

A) The testimony of the prosecutrix does not inspire confidence.

B) No satisfactory explanation for the delay in lodging the F.I.R. is seen.

C) The report of the F.S.L. does not corroborate the testimony of the prosecutrix.

D) The testimony of Dr. Smt. A. Chandra P.W.6 does not corroborate the testimony of the Cheti Bai P.W.2 that the prosecutrix was ravished by the appellant and co-accused for one hour each.

E) The fact that the ornaments alleged to have been removed from the person of the prosecutrix could not be recovered from the appellants during investigation also renders the prosecution story doubtful.

F) The fact that the prosecutrix did not inform Lachhni Bai P.W.4 about the commission of rape by the appellant and informed her only about the removal of ornaments from her person by the appellants also renders the testimony of the prosecutrix doubtful and unworthy of credit.

13. In view of the above, conviction of the appellant under Section 376(2)(g) I.P.C. and the sentence awarded thereunder by the learned trial Judge deserves to be set aside.

14. In the result the appeal is allowed. Conviction of the appellant under Section 376(2)(g) I.P.C. and the sentence awarded thereunder by the learned trial Judge are set aside. The appellant is acquitted and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded.

Sd/-
Dilip Raosaheb Deshmukh
Judge

14.6.2006